

1 UNITED STATES DISTRICT COURT
 2 FOR THE DISTRICT OF NEW MEXICO
 3 * * * * *
 4 AIMEE BEVAN, as Personal Representative of
 the Estate of Desirée Gonzales, deceased,
 5 Plaintiff,
 6 -vs- Case No. 1:15-CV-00073-KG-SCY
 7 SANTA FE COUNTY, MARK GALLEGOZ,
 8 Deputy Warden/Acting Youth Development
 Administrator, in his official and individual
 9 capacities, GABRIEL VALENCIA, Youth Development
 Administrator, Individually, MATTHEW EDMUNDUS,
 10 Corrections Officer, Individually, JOHN ORTEGA,
 Corrections Officer, HOLLY ARCHULETA, Corrections
 11 Nurse, Individually, ST. VINCENT HOSPITAL, and
 NATHAN PAUL UNREFER, M.D.,
 12 Defendants.
 13 * * * * *

15 EXAMINATION BEFORE TRIAL of
 16 MICHAEL D. COHEN, M.D., held at Breakell Law
 Firm, 10 Airline Drive, Albany, New York on
 17 Thursday, January 21, 2016, commencing at
 18 10:35 a.m., before NORA B. LAMICA, Court Reporter
 19 and Notary Public in and for the State of New York
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 21
 22
 23
 24

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Ex.3

<p style="text-align: center;">9</p> <p>(Exhibit 101 marked for identification.)</p> <p>1 Q. Doctor, just in terms of kind-of a basic 2 chronology for the case, I think what the -- what 3 you're contending in terms of just a general 4 overview of the case is that Desiree Gonzales was 5 a juvenile who overdosed at about 7:30 p.m.. She 6 was given Narcan by EMTs. She was then 7 transported to St. Vincent's Hospital, where she 8 was observed for a period of time. She received 9 a medical clearance from that facility, and then 10 she arrived at the YDP, the county facility I 11 represent, about two to three hours after the 12 overdose and after she received the Narcan, and 13 then later began to develop symptoms consistent 14 with a recurring overdose. Is that kind-of a 15 basic working fact pattern for you here?</p> <p>16 A. That's a basic fact pattern, I think, but I 17 really didn't express an opinion about the 18 original overdose, or the EMT resuscitation in 19 the field, or the hospital care prior to her 20 transfer.</p> <p>21 Q. And I'm not asking you to do that. I'm just 22 trying to see if we can agree that that's the 23 basic working fact pattern that you're dealing 24</p> <p style="text-align: center;">AMF REPORTING SERVICES, INC. 518-982-1341 WWW.AMFREPORTING.COM</p>	<p style="text-align: center;">11</p> <p>1 Q. You've never encountered it, correct? 2 A. Correct. 3 Q. How many years have you been practicing in the 4 juvenile detention setting? 5 A. Well, I was in a state agency for twenty years in 6 a largely administrative position, where we did 7 not have youth coming from the street into our 8 facilities. I spent one year working at the 9 New York City jail at Riker's Island, which was a 10 pre-adjudication detention facility, but the 11 youth coming into our custody at that time had 12 usually spent two or three days in police lockup 13 and central booking before they got to the 14 island. So it would not have occurred in the 15 settings in which I practiced. 16 Q. I see. So you've never encountered this 17 particular fact pattern? 18 A. That's right. 19 Q. And have you talked to any colleagues that have 20 ever experienced a fact pattern like this? 21 A. No. 22 Q. Are you aware of any discussion in any medical 23 literature that describes a fact pattern like 24</p> <p style="text-align: center;">AMF REPORTING SERVICES, INC. 518-982-1341 WWW.AMFREPORTING.COM</p>
<p style="text-align: center;">10</p> <p>1 with here?</p> <p>2 A. Could you repeat the part about what happened at 3 the detention center?</p> <p>4 Q. Sure. She arrived at the YDP approximately two 5 to three hours after her overdose and receipt of 6 Narcan, and then -- and began to exhibit symptoms 7 consistent with recurrence of the overdose?</p> <p>8 MR. TAYLOR: Form.</p> <p>9 A. I guess so. Symptoms consistent with heroin 10 overdose. Whether it's recurrent or continuing, 11 I don't know that.</p> <p>12 Q. And I'm not asking you to. What I am going to 13 ask you, though, is how many times in your career 14 have you seen this particular fact pattern of a 15 juvenile overdosing, receiving Narcan, going to 16 the hospital, getting a medical clearance, and 17 then going to a detention facility with the 18 clearance, and then developing either a 19 recurrence or a continuing overdose?</p> <p>20 A. I have not seen that before.</p> <p>21 Q. You would agree with me this is a very unusual 22 case?</p> <p>23 MR. HUNT: Object to the form.</p> <p>24 A. I don't know that.</p> <p style="text-align: center;">AMF REPORTING SERVICES, INC. 518-982-1341 WWW.AMFREPORTING.COM</p>	<p style="text-align: center;">12</p> <p>1 A. I've seen discussions of recurrent overdose, but 2 not exactly this fact pattern.</p> <p>3 Q. I see. And I got a -- what's been called a 4 supplemental expert report from you by 5 plaintiff's counsel last Friday, January 15th. 6 You're aware of that supplemental report?</p> <p>7 A. Yes.</p> <p>8 Q. And so the opinions that you're expressing in 9 this case are based on seven months of work and 10 reflection on the various -- at least seven 11 months on the various records and materials in 12 the case, correct?</p> <p>13 A. Yes.</p> <p>14 Q. You've had the benefit of hindsight, correct?</p> <p>15 A. Well, I didn't have all the documents available 16 to me for seven months. Some of the documents 17 were only made available in December, in 18 particular the depositions and the sheriff's 19 report and the training records.</p> <p>20 Q. But you've had an opportunity, during the time 21 that you worked on the case, to reflect back over 22 with an extensive period of time about the facts 23 and the circumstances, correct?</p> <p>24 A. Yes.</p> <p style="text-align: center;">AMF REPORTING SERVICES, INC. 518-982-1341 WWW.AMFREPORTING.COM</p>

<p style="text-align: right;">93</p> <p>1 they're unconscious?</p> <p>2 A. Or sleeping, yes.</p> <p>3 Q. Because it's during the period of unconsciousness</p> <p>4 that they're failing to protect their airway</p> <p>5 adequately, right?</p> <p>6 A. Well, protecting the airway is a different issue</p> <p>7 entirely, but when people who are suffering from</p> <p>8 excess narcotics or are awake and alert, or when</p> <p>9 they're stimulated to wake back up, they will</p> <p>10 continue to breathe, but when they're asleep or</p> <p>11 passed out, then the breathing -- the abnormal</p> <p>12 breathing pattern will emerge and they may indeed</p> <p>13 stop breathing.</p> <p>14 Q. Is that -- let me just ask it in a different way.</p> <p>15 Is that a common symptom for a person who is</p> <p>16 under the influence of heroin to report that I'm</p> <p>17 just having trouble breathing?</p> <p>18 A. I don't think so, unless there's some other</p> <p>19 medical complication going on. If they had a</p> <p>20 pulmonary embolus from a heart valve infection or</p> <p>21 something like that, that's not relevant to this</p> <p>22 case.</p> <p>23 Q. And that's what I'm saying. Let's exclude other</p> <p>24 things. If we're just talking about a heroin</p> <p style="text-align: right;">AMF REPORTING SERVICES, INC. 518-982-1341 WWW.AMFREPORTING.COM</p>	<p style="text-align: right;">95</p> <p>1 she was complaining to her mother.</p> <p>2 Q. Did you see any indication anywhere that</p> <p>3 Ms. Gonzales conveyed any of the information</p> <p>4 that's reflected in this paragraph to anyone at</p> <p>5 the time?</p> <p>6 A. No. She was asked many questions about whether</p> <p>7 she called the facility, whether she talked to</p> <p>8 the doctors or nurses. She did not. I don't</p> <p>9 recall if she was asked whether she talked to her</p> <p>10 older son or anyone else about it. I don't know</p> <p>11 that.</p> <p>12 Q. I mean, at that time, she also had a concern that</p> <p>13 she was going to be arrested that evening on her</p> <p>14 own warrant?</p> <p>15 MR. HUNT: Object to the form.</p> <p>16 A. Well, no. Once she was in the room with Desiree,</p> <p>17 I believe that had been addressed already,</p> <p>18 because they wouldn't let her in the room, I</p> <p>19 don't believe, until that had been settled, if I</p> <p>20 remember correctly.</p> <p>21 Q. Were you aware that there were also police</p> <p>22 officers in the room?</p> <p>23 A. I don't know if they were in the room or at the</p> <p>24 door. My impression was that they were at the</p> <p style="text-align: right;">AMF REPORTING SERVICES, INC. 518-982-1341 WWW.AMFREPORTING.COM</p>
<p style="text-align: right;">94</p> <p>1 overdose, people don't usually say, "I'm having</p> <p>2 trouble breathing." That doesn't -- it's usually</p> <p>3 not vocalized that way as a symptom, right?</p> <p>4 A. Yes. Just give me a minute to think about it,</p> <p>5 though.</p> <p>6 Q. Sure.</p> <p>7 A. I mean, it really depends on the history of the</p> <p>8 individual, what kind of symptoms they may have</p> <p>9 had before they shot up and so on.</p> <p>10 Q. Again, I'm excluding other causes. I'm just</p> <p>11 saying they're talking about heroin.</p> <p>12 A. So your hypothetical is in the pure, let's say</p> <p>13 first time shot heroin overdose?</p> <p>14 Q. Not necessarily first time shot, but any kind of</p> <p>15 heroin overdose. Let's just limit it to that.</p> <p>16 A. Well, I don't know that there is such a thing as</p> <p>17 a pure heroin overdose.</p> <p>18 Q. I'm saying without complicating factors like</p> <p>19 pulmonary edema.</p> <p>20 A. Right. As long as they're awake, I would not</p> <p>21 expect them to complain about breathing problems,</p> <p>22 unless there's some other medical issue going on</p> <p>23 related to the heroin. But she -- we don't know</p> <p>24 what else may have been going on with her when</p> <p style="text-align: right;">AMF REPORTING SERVICES, INC. 518-982-1341 WWW.AMFREPORTING.COM</p>	<p style="text-align: right;">96</p> <p>1 door.</p> <p>2 Q. I'm just scrolling down the report here. You had</p> <p>3 some opinions that Nurse Archuleta should have</p> <p>4 given more explicit direction to the correctional</p> <p>5 officers about how to monitor Ms. Gonzales'</p> <p>6 breathing under these circumstances; is that</p> <p>7 right?</p> <p>8 A. Yes.</p> <p>9 Q. Is that something that you've given instruction</p> <p>10 about before in your practice?</p> <p>11 A. I don't think so. I don't think so. I haven't</p> <p>12 given or asked nurses on call to give advice</p> <p>13 about how to observe someone that's post-heroin</p> <p>14 overdose.</p> <p>15 Q. You have a little list on Page 8 and 9 of your</p> <p>16 second report. Actually, it's on Page 8 about</p> <p>17 some breathing observation methods. That's what</p> <p>18 I'm going to call it. Where did you obtain that</p> <p>19 information on Page 8?</p> <p>20 A. Those were things that came to mind as I thought</p> <p>21 about the type of instruction that she could have</p> <p>22 given them. So it's based on my clinical</p> <p>23 experience and experience working with nurses and</p> <p>24 working with direct care staff in juvenile</p> <p style="text-align: right;">AMF REPORTING SERVICES, INC. 518-982-1341 WWW.AMFREPORTING.COM</p>

<p style="text-align: center;">97</p> <p>facilities. These are the kinds of things that we do, or in my agency that we did occasionally ask staff to do when they needed to observe someone.</p> <p>I also found, when I was reviewing the training records, that there was some specific questions in the CPR AED post-test that mimic these almost exactly, but I wasn't reading those training records until yesterday or the day before and I wrote this report --</p> <p>Q. On Friday?</p> <p>A. -- the previous week.</p> <p>Q. What CPR -- what records are you referring to?</p> <p>A. The training records of -- I think I saw them in Edmunds, Ortega and Valencia, at least two of the three. I think Edmunds and Ortega for sure. I don't recall if I saw them in Valencia's, as well.</p> <p>Q. And you say that's in CPR training?</p> <p>A. Well, there's training -- documentation of training, some files for each of those individuals.</p> <p>And the post-test for I think the 2011, the 2010, maybe 2009 First Aid/CPR/AED training</p> <p style="text-align: center;">AMF REPORTING SERVICES, INC. 518-982-1341 WWW.AMFREPORTING.COM</p>	<p style="text-align: center;">99</p> <p>answer sheet, filling in slugs, as opposed to the previous year, where they had the whole test, the question, and they circled the correct answer.</p> <p>So in those earlier years that I was just discussing, you could -- as a reviewer, I could see what the question was and what the answers were. Subsequently, that wasn't in the record.</p> <p>Q. Does that information impact your opinion about what you believe the nurse should have communicated in terms of instruction?</p> <p>A. Well, it supports my belief that things like counting the number of breaths per minute or listening for unusual sounds or looking at the color were things -- supports the idea that these are things that lay staff could do, because it was part of their First Aid/CPR/AED training.</p> <p>Q. My question is this. Do you -- there's a criticism of the nurse about not providing more specific guidance for observations of Desiree Gonzales with respect to her breathing. Are you saying now that based on this training that you've just noticed over the last couple days that, well, she didn't really need to do that?</p> <p style="text-align: center;">AMF REPORTING SERVICES, INC. 518-982-1341 WWW.AMFREPORTING.COM</p>
<p style="text-align: center;">98</p> <p>included two specific questions. One was about when do you call 9-1-1. Of the four choices, when the person was having trouble breathing is the correct answer.</p> <p>And the other question was which of the following are signs or symptom - I don't remember the exact words - of troubled breathing. And one is more rapid or slower, and another was painful. Another was turning blue, or strange sounds was part of the answer, unusual or strange sounds breathing. And then another was unusual color of the skin of blue or dark. Blue or pale, I think it said. So in any case, the answer to that question was all of the above.</p> <p>Q. So that's in the context of what, just general medical emergencies; is that --</p> <p>A. It was the First Aid/CPR/AED class. These are the things that the people who are being trained to provide life-saving treatment are being taught, and we're documenting their answers in their training records.</p> <p>Subsequent to that year, the training records have only the question number and the letter of the answer, so they had to fill out an</p> <p style="text-align: center;">AMF REPORTING SERVICES, INC. 518-982-1341 WWW.AMFREPORTING.COM</p>	<p style="text-align: center;">100</p> <p>A. No, not at all. I'm saying that because they had had that training, there was all the more reason why she should have felt comfortable giving them advice about, more specifically, how to observe their breathing.</p> <p>Q. Because they, as correctional officer staff, may not have discerned or understood how to look at breathing in a particular way. That was more detailed than what they would ordinarily do in doing unit checks, right?</p> <p>A. If I understand the question correctly, yes, that is part of the point I was making is that I believe she would have known what their usual or routine unit checks consisted of, which is looking in the window, into the room, observing that the youth's chest is moving, and therefore, they're okay, move onto the next room. And that routine would not have been appropriate for Desiree, and that's why additional instruction would have been needed.</p> <p>Q. I think ultimately, though, you would say that at least in this case, the nurse shouldn't even have gotten to that point because Desiree Gonzales should have been sent to the hospital regardless?</p> <p style="text-align: center;">AMF REPORTING SERVICES, INC. 518-982-1341 WWW.AMFREPORTING.COM</p>